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Attorneys for Plaintiffs Broadcast Music, Inc.;

Paul Simon Music; Universal-Song Of Polygram

International, Inc.; Gibb Brothers Music;

Crompton Songs; Songs Of Universal, Inc.;

Screen Gems-EMI Music, Inc.; and Rondor Music

International, Inc. d/b/a Irving Music

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

BROADCAST MUSIC, INC.; PAUL SIMON
MUSIC; UNIVERSAL-SONG OF
POLYGRAM INTERNATIONAL, INC.;
GIBB BROTHERS MUSIC; CROMPTON
SONGS; SONGS OF UNIVERSAL, INC.
SCREEN GEMS-EMI MUSIC, INC.;
RONDOR MUSIC INTERNATIONAL, INC.
d/b/a IRVING MUSIC;

Plaintiffs,

vs.

FIVE-STAR RESTAURANTS LLC d/b/a
ZEFFERINO; FIVE STAR ENTERPRISES
LLC d/b/a Zefferino; DAVID WILLIAMSON;
VINCENT SCOTTO; ANTONIO CRIMANI;
GENNARO SCOTTO; IDA SCOTTO; and
VICTOR SCOTTO

Defendants.

Case No.

**COMPLAINT FOR COPYRIGHT
INFRINGEMENT**

1 Plaintiffs, by their attorneys, for their Complaint against Defendants, allege as follows (on
2 knowledge as to Plaintiffs; otherwise on information and belief):

3 **JURISDICTION AND VENUE**

4 1. This is a suit for copyright infringement under the United States Copyright Act of
5 1976, as amended, 17 U.S.C. Sections 101 *et seq.* (the "Copyright Act"). This Court has
6 jurisdiction pursuant to 28 U.S.C. Section 1338(a).

7 2. Venue is proper in this judicial district pursuant to 28 U.S.C. Section 1400(a).

8 **THE PARTIES**

9 3. Plaintiff Broadcast Music, Inc. ("BMI") is a corporation organized and existing
10 under the laws of the State of New York. BMI's principal place of business is 7 World Trade
11 Center, 250 Greenwich Street, New York, New York 10007. BMI has been granted the right to
12 license the public performance rights in approximately 10.5 million copyrighted musical
13 compositions (the "BMI Repertoire"), including those which are alleged herein to have been
14 infringed.

15 4. The Plaintiffs other than BMI are the owners of the copyrights in the musical
16 compositions, which are the subject of this lawsuit. All Plaintiffs are joined pursuant to Fed. R.
17 Civ. P. 17(a) and 19(a).

18 5. Plaintiff Paul Simon Music is a sole proprietorship owned by Paul Simon. This
19 Plaintiff is the copyright owner of at least one of the songs in this matter.

20 6. Plaintiff Universal-Songs of Polygram International, Inc. is a corporation. This
21 Plaintiff is the copyright owner of at least one of the songs in this matter.

22 7. Plaintiff Gibb Brothers Music is a partnership owned by the Estate of Maurice
23 Ernest Gibb and the Estate of Robin Gibb. This Plaintiff is the copyright owner of at least one of
24 the songs in this matter.

25 8. Plaintiff Crompton Songs is a sole proprietorship owned by Barry Alan Gibb. This
26 Plaintiff is the copyright owner of at least one of the songs in this matter.

27 9. Plaintiff Songs of Universal, Inc. is a corporation. This Plaintiff is the copyright
28 owner of at least one of the songs in this matter.

1 10. Plaintiff Screen Gems-EMI Music, Inc. is a corporation. This Plaintiff is the
2 copyright owner of at least one of the songs in this matter.

3 11. Plaintiff Rondor Music International, Inc. is a corporation doing business as Irving
4 Music. This Plaintiff is the copyright owner of at least one of the songs in this matter.

5 12. Defendant Five-Star Restaurants, LLC is a limited liability company organized and
6 existing under the laws of the state of Nevada, which operates, maintains and controls an
7 establishment known as Zeffirino, located within The Venetian Resort, Hotel and Casino at 3377
8 Las Vegas Blvd. S, Suite 2095, Las Vegas, Nevada 89109 (the "Establishment").

9 13. Defendant Five Star Enterprises LLC is a limited liability company organized and
10 existing under the laws of the state of Nevada, which upon information and belief operated,
11 maintained and controlled the Establishment during the relevant time period.

12 14. In connection with the operation of the Establishment, Defendant Five-Star
13 Restaurants, LLC and/or Five Star Enterprises LLC publicly performs musical compositions and/or
14 causes musical compositions to be publicly performed.

15 15. Defendants Five-Star Restaurants, LLC and Five Star Enterprises LLC have a direct
16 financial interest in the Establishment.

17 16. Defendant Gennaro Scotto is a Managing Member of Defendant Five Star
18 Enterprises LLC with responsibility for the operation and management of that limited liability
19 company and the Establishment.

20 17. Defendant Gennaro Scotto has the right and ability to supervise the activities of
21 Defendant Five Star Enterprises LLC and a direct financial interest in that limited liability company
22 and the Establishment.

23 18. Defendant Ida Scotto is a Managing Member of Defendant Five Star Enterprises,
24 LLC with responsibility for the operation and management of that limited liability company and
25 the Establishment.

26 19. Defendant Ida Scotto has the right and ability to supervise the activities of
27 Defendant Five Star Enterprises LLC and a direct financial interest in that limited liability company
28 and the Establishment.

20. Defendant Victor Scotto is a Managing Member of Defendant Five Star Enterprises LLC with responsibility for the operation and management of that limited liability company and the Establishment.

21. Defendant Victor Scotto has the right and ability to supervise the activities of Defendant Five Star Enterprises LLC and a direct financial interest in that limited liability company and the Establishment.

22. Defendant Vincent Scotto is a Managing Member of Defendant Five-Star Restaurants, LLC with responsibility for the operation and management of that limited liability company and the Establishment.

23. Defendant Vincent Scotto has the right and ability to supervise the activities of Defendant Five-Star Restaurants, LLC and a direct financial interest in that limited liability company and the Establishment.

24. Defendant Antonio Crimani is a Managing Member of Defendant Five-Star Restaurants, LLC with responsibility for the operation and management of that limited liability company and the Establishment.

25. Defendant Antonio Crimani has the right and ability to supervise the activities of Defendant Five-Star Restaurants, LLC and a direct financial interest in that limited liability company and the Establishment.

26. Defendant David Williamson is a Managing Member of Defendant Five-Star Restaurants, LLC with responsibility for the operation and management of that limited liability company and the Establishment.

27. Defendant David Williamson has the right and ability to supervise the activities of Defendant Five-Star Restaurants, LLC and a direct financial interest in that limited liability company and the Establishment.

CLAIMS OF COPYRIGHT INFRINGEMENT

28. Plaintiffs repeat and reallege each of the allegations contained in Paragraphs 1 through 27.

29. Since December 2008, BMI has reached out to Defendants over 140 times, by

1 telephone, in-person visits and mail, in an effort to educate Defendants as to their obligations under
2 the Copyright Act with respect to the necessity of purchasing a license for the public performance
3 of musical compositions in the BMI repertoire. Included in the letters were Cease and Desist
4 Notices, providing Defendants with formal notice that they must immediately cease all use of BMI-
5 licensed music in the Establishment.

6 30. Plaintiffs allege ten (10) claims of willful copyright infringement, based upon
7 Defendants' unauthorized public performance of musical compositions from the BMI Repertoire.
8 All of the claims for copyright infringement joined in this Complaint are governed by the same
9 legal rules and involve similar facts. Joinder of these claims will promote the convenient
10 administration of justice and will avoid a multiplicity of separate, similar actions against
11 Defendants.

12 31. Annexed to this Complaint is a schedule (the "Schedule") and incorporated herein
13 is a list identifying some of the many musical compositions whose copyrights were infringed by
14 Defendants. The Schedule contains information on the ten (10) claims of copyright infringement at
15 issue in this action. Each numbered claim has the following eight lines of information (all
16 references to "Lines" are lines on the Schedule): Line 1 providing the claim number; Line 2 listing
17 the title of the musical composition related to that claim; Line 3 identifying the writer(s) of the
18 musical composition; Line 4 identifying the publisher(s) of the musical composition and the
19 plaintiff(s) in this action pursuing the claim at issue; Line 5 providing the date on which the
20 copyright registration was issued for the musical composition; Line 6 indicating the copyright
21 registration number(s) for the musical composition; Line 7 showing the date(s) of infringement;
22 and Line 8 identifying the establishment where the infringement occurred. A true and correct copy
23 of the Schedule is attached as Exhibit 1.

24 32. For each work identified on the Schedule, the person(s) named on Line 3 was the
25 creator of that musical composition.

26 33. For each work identified on the Schedule, on or about the date(s) indicated on Line
27 5, the publisher(s) named on Line 4 (including any predecessors in interest), complied in all
28 respects with the requirements of the Copyright Act and received from the Register of Copyrights

1 Certificates of Registration bearing the number(s) listed on Line 6.

2 34. For each work identified on the Schedule, on the date(s) listed on Line 7, Plaintiff
3 BMI was (and still is) the licensor of the public performance rights in the musical composition
4 identified on Line 2. For each work identified on the Schedule, on the date(s) listed on Line 7, the
5 Plaintiff(s) listed on Line 4 was (and still is) the owner of the copyright in the respective musical
6 composition listed on Line 2.

7 35. For each work identified on the Schedule, on the date(s) listed on Line 7,
8 Defendants publicly performed and/or caused to be publicly performed at the Establishment the
9 musical composition identified on Line 2 without a license or permission to do so. Thus,
10 Defendants have committed copyright infringement.

11 36. The specific acts of copyright infringement alleged in the Complaint, as well as
12 Defendants' entire course of conduct, have caused and are causing Plaintiffs great and incalculable
13 damage. By continuing to provide unauthorized public performances of works in the BMI
14 Repertoire at the Establishment, Defendants threaten to continue committing willful copyright
15 infringement. Unless this Court restrains Defendants from committing further acts of infringement,
16 Plaintiffs will suffer irreparable injury for which they have no adequate remedy at law.

17 37. In addition to the 68 separate written notices and Cease and Desist Notices, BMI
18 has also attempted to speak with Defendant David Williamson at least 40 times. Although BMI
19 representatives have left over 30 voice mail messages for Defendant David Williamson, he has not
20 returned any of those telephone calls. On at least five occasions where a BMI representative was
21 able to finally reach Defendant David Williamson via telephone, he promptly hung up and
22 terminated the call as soon as the BMI representatives identified themselves.

23 38. Defendants' conduct alleged herein has been and will be willful and malicious, as
24 evidenced by the fact that Defendants' infringement has continued even after they received notice
25 of their wrongdoing.

WHEREFORE, Plaintiffs pray that:

A. Defendants, their agents, servants, employees, and all persons acting under their permission and authority, be enjoined and restrained from infringing, in any manner, the copyrighted musical compositions licensed by BMI, pursuant to 17 U.S.C. Section 502;

B. Defendants be ordered to pay statutory damages in the maximum amount allowable due to Defendants' willful copyright infringement, pursuant to 17 U.S.C. Section 504(c);

C. Defendants be ordered to pay costs, including a reasonable attorney's fee, pursuant to 17 U.S.C. Section 505; and

D. Plaintiffs have such other and further relief as is just and equitable.

HOWARD & HOWARD ATTORNEYS PLLC

By: /s/ Robert Hernquist
Robert Hernquist, Nevada Bar No. 10616
James A. Kohl, Nevada Bar No. 5692

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